IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2738 OF 2005

Bharat Namdev Sasane Petitioner

versus

Sau.Smita Bharat Sasane Respondent

S.B.Shetye with Sudatta Patil for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd May 2005

PC :

1. Heard Mr.Shetye appearing for the petitioner.. Mr.Shetye appearing for petitioner - original defendant in Special Civil Suit No.783 of 2004 challenges an order passed by the Trial Court rejecting the application preferred by the petitioner for dismissal of the suit under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

2. After hearing Mr.Shetye, in my view, the order passed by the learned Trial Judge cannot be said to be vitiated by error apparent on the face of record nor can it be said to be perverse. The

learned Judge consistent with the law laid down by the Apex Court in the case of State of Orissa Vs. Klockner and Company and others reported in AIR-1996-SC-2140 setting out the distinction between absence of cause of action for the suit and plaint disclosing no cause of action, dismissed the petitioner's application.

3. It is the latter portion, namely, plaint not disclosing cause of action which would permit invoking of Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. If there is no cause of action for the suit, the suit can be dismissed but that is a finding to be recorded upon evidence being led.

4. The impugned order does not in any manner prevent parties from raising appropriate contentions about maintainability of the suit and the learned Trial Judge to frame issue based thereon and answer it in accordance with law. With these clarifications the petition is dismissed.

(S.C.DHARMADHIKARI, J.)